APPENDIX A

Excerpt from Transcript of Second Trial Regarding the Object of Defendants' Ambulatory Picketing [II JA 890-891]

Q. [Mr. Alexander, Plaintiff's counsel] Mr. Hodson, I want to know, the question was this, that if they were—if these employees of Great Coastal customers were respecting your picket line, they would not be loading and unloading Great Coastal freight, would they?

A. Naturally, they wouldn't.

Q. Would not?

A. Would not.

Q. And when your roving pickets went there, they went there knowing this, didn't they?

MR. DICKSTEIN: Objection. This witness doesn't know the state of mind of anyone else.

MR. ALEXANDER: All right. I will withdraw that one.

BY MR. ALEXANDER:

Q. You said to Mr. Trerotola, if the employees of Great Coastal's customers were cooperating they would stop loading Great Coastal freight, isn't that right?

A. Employers?

Q. Employees.

A. Employees.

Q. Employees.

A. If the employers were cooperating, they wouldn't.

Q. See, Mr. Hodson, I haven't said a word about employers and I am not interested in employers. I am interested in these things here.

If the employees, union members, who were working for Great Coastal's customers, cooperated they wouldn't load or unload, isn't that right? We have already established it once.

A. If they respect the picket line, they would not.

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APPENDIX B

Summary of Testimony of C. E. Estes Cited at p. 5 of Brief in Opposition

At II JA 718-721 Estes testified that there was no time during the strike that drivers would not cross the picket line at Richmond to drive Great Coastal's trucks; that the drivers did other work than driving during the strike; that Great Coastal obtained an intrastate contract hauling permit from the State: and that it would continue to pick up freight in the Virginia area. He was also permitted to testify as follows:

> "Q. Do you know of any reason for any change in your operations during the strike other than the secondary boycotting activity?
>
> MR. DICKSTEIN: Objection.
>
> THE COURT: Overruled.
>
> THE WITNESSS No, sir. We could have operated, handled every customer we had and were doing it." (II JA 720)*

At II JA 731 Estes testified that during the strike he had freight which he could not deliver but had to bring back. At II JA 732 the Court overruled defendant's objection that the testimony had not been connected with secondary boycott activity. No such connection was subsequently made.

At II JA 740 Estes testified that Great Coastal was handling local cartage in Richmond during the strike and that local cartage was also being handled in New Jersey.

At II JA 743-744 Estes testified that the reason that there were only two north-bound shipments in October 1970 during the strike was that Great Coastal had to restrict the number of stops on a trailer because the drivers were

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* The jury was instructed to disregard this testimony. II JA 916.

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"trying to shake these pickets so they * * * wouldn't shut off the delivery when we went to our custombers". He also stated: "If we had been picketed legally, we could have hauled all the freight we were handling before." He also said: "We had cartage agents up there willing to deliver any freight we brought to them if we could keep the illegal picketing away" and that "[t]here was no reason to take freight that was going to sit on our lot and illegal picketing could keep us from delivering it." (*Id.*)

At II JA 763-764 Estes testified: "We picked up all the calls that we could pick up that the pickets would not—weren't harassing us and allowing them to load it." II JA 763. He denied that he was seeking to recover damages for all the business lost during the strike but only those "that were inflicted by the illegal strike" (*id.*). He opined further that "[o]ur business was destroyed by violence and illegal picketing." (II JA 763-764).

At II JA 777-778 Estes stated that because of the picketing, Great Coastal lost the business of Rochester Button which went to a competitor and did not return to Great Coastal after the strike (II JA 777). He also stated that the pickets followed Great Coastal's trucks wherever they went (II JA 778).

At II JA 789-790 Estes testified to Great Coastal's savings because it was not necessary to use the Jersey City terminal as he had been required under the prior Union agreement. He also testified that it was his belief that his customers were "coerced into not doing business" with Great Coastal (II JA 789-790). However, when Estes attempted to explain what he meant by "coerced" the Court sustained an objection to such explanation on the ground that the testimony was not based on Estes' personal knowledge. (II JA 790-791).

Estes' testimony at II JA 810-813 involves situations where Great Coastal first attempted unsuccessfully to make

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deliveries, brought the cargo back, and ultimately affected delivery. Estes stated that he did not keep a record of these incidents because "[n]obody asked for it, so why go to the cost and expense?" (II JA 810). He denied the reshipments and stated that "they would be reflected in our operating ratio". He was unable to identify a specific incident in which this occurred, even with the single company that he named (Chesapeake) because there were "so many of them" (II JA 811-813).

APPENDIX C

Summary of Testimony and Exhibits Referred to at Opp. 14

For convenience we reproduce respondent's assertion:

> "With that exception, as the Joint Appendix shows, all liability and damage evidence was readmitted and presented to the jury at the second trial—including the boycott directives of Union officials and the uncontested evidence that all Company damages flowed directly from secondary boycotting and that none resulted from primary picketing (868, 876, B. 226, B. 271, B. 275)." (Opp. 14)

Of these references there is testimony only at 876; it refers to "the boycott directives of union officials".

At 868 plaintiff introduced eight exhibits, and its own answers to certain interrogatories. Those exhibits which fit either of the categories, relate only to the "boycott directives". The answers to the interrogatories are identical, each drawing attention to an attached report of the accountants Ross, Lybrand and Montgomery; Those accounting records, of course, show nothing about the *cause* of the losses which they reflect.

B. 271 is reproduced at 868; this reference is therefore duplicative. At B. 226 respondent introduced Exhibit Nos. 104a, 104b, 110 and 111. The 104 Exhibits are working papers of Mr. Lepp, plaintiff's accounting witness who acknowledged that he did not know the cause of any losses (II JA 846, 847, quoted as Pet. 9). Exhibits 110-111 were charts showing Great Coastal's net profit and loss; they do not show whether any losses were caused by legal or illegal activity.

At B. 75 respondent introduced Exhibits 108, 109, 112 and 113. Exhibits 108 and 109 were plaintiff's answers to interrogatories. We do not know to which of its answers respondent invites the Court's attention, but none were

evidence that all damages (or any) flowed from secondary boycotting. Indeed, in answer to Interrogatory 13(d) respondent said in part:

> "In most cases, customers reacted to union letters, oral appeals and roving pickets by ceasing to ship or receive freight from the plaintiff, but without expressly notifying the plaintiff that they were ceasing to do business with it."

Exhibits 112 and 113 are the tonnage and revenue reports for 1970 and 1971 respectively. These show a causal relationship between the strike and plaintiff's loss of revenue, but not between illegal strike activities and that loss, as respondent alleges.